PRELIMINARY MATTER

Applicant has submitted a PTO-1449 and one reference, COPY attached; certified as deposited as first class mail on May 1, 2002, prior to the issuance of the first Office Action in this file history. Consideration by the Office should be confirmed to the undersigned by appropriate initial and dating. Please send the information to the undersigned at the given address or fax it to the undersigned at 425-640-0525

(1) Not required; no amendments filed herewith.

(2) No specification amendments are required.

(3) REMARKS

RE PARA. 1 and PARA. 2 and PARA. 3 OF THE "FINAL" ACTION

All pending claims, 1 – 20, were rejected under *newly cited* U.S. Pat. No. 6,304,860 (Martin, Jr. et al., more simply hereinafter "Martin" or "the reference"). A petition regarding the appropriateness of the designation of the Action as "Final" in view of "the new ground(s) of rejection" is filed herewith.

It is believed by the applicant that this rejection is based on an flawed analysis of both the present application and the reference.

1. MARTIN JR. ET AL. DOES NOT STAND FOR THE PROPOSITION RELIED UPON IN THE ACTION

First, with respect to the present application, the present Final Office Action and the previous first Office Action – which cited the now withdrawn Ogilvie reference - both seem to indicate that the USPTO analysis is based on the misunderstanding that a "real estate escrow" – the processes of which are encompassed by the present invention - is simply a type of financing arrangement. This is not correct. The only connection between the real estate escrow and financing arrangements is that in a non-cash transaction for purchase and sale of real estate, the property buyer may be obtaining a mortgage to meet the sale price and the property seller may be paying off an existing mortgage on the property. This is only one small element of a real estate escrow.

More to the point, the escrow company is charged with ensuring the terms of condition of a purchase-and-sale contract for a specific property are verified and fulfilled prior to the transfer of the deed of ownership from a seller to a buyer. The many duties of a real estate escrow transaction are illustrated by contiguous FIG. 1A, 1B and 1C of the present application. Only one small segment is related to debt payment, namely pay-off of the property seller's mortgage, if any, and the verification of the buyer having obtained a mortgage, if any (i.e., if not paying cash). In fact, this is not a necessary element to the escrow, as the seller can choose to pay off his mortgage, if any, separately or perhaps even transfer responsibility for mortgage payments to the buyer; these are peripheral agreements to the escrow transaction as a whole. It can be readily seen from present applicant's specification that a real estate escrow is far more complex than a simple loan-and-payment transaction, involving many parties and entities.

Turning now to the reference, Martin Jr. et al. (hereinafter also referred to as simply "Martin") only describe an AUTOMATED DEBT PAYMENT SYSTEM AND METHOD USING ATM NETWORK, what is described is a totally different concept, specifically limited to existing debt-and-payment transactions. Perhaps most importantly, it is noted that this cited reference has to do with payments on an *existing* debt. In a real estate escrow, for the buyer of the property, such a system and method would only be used *after escrow closed* because until such time, there is no existing debt. Thus, thinking in terms of the applicant's flow chart compared to Martin's FIGURE 2 and 3 relied upon by the Examiner, Martin's processes can only be implemented *after escrow is closed.* See FIG. 1C, element 317. In other words, everything Martin does is for a situation in real life which is completely downstream of element 317, "CLOSE ESCROW" of applicants FIG. 1C, when the buyer now has taken title to the property and perhaps post-escrow incurred the new mortgage.

As to the seller and any existing mortgage, the Martin system is likely not applicable as one can not miss the intent of the system and method for improving the consumer's ability to make to make one payment of a series via use of an ATM machine. See e.g., Martin col. 4, line 17 – col. 5, line 35, where each and every stated "object of the present invention" – 16 in all presented – has to do with *existing debt payment.* Directly contrary to this is a real estate escrow where for the seller there is a one-time payoff of the whole

mortgage, if any, either by the seller through the escrow company or by the use of funds from the buyer deposited with the escrow company.

Further evidence that Martin anticipates only existing loan payment solutions is given at e.g, col. 9, ll. 37-43 and throughout his claims, each independent claim relating to payments for a ". . .consumer debt obligation using an ATM network. . .."

The law is clear. A valid rejection on the ground of anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. Soundscriber Corp. v. U.S., 148 USPQ 298, 301 (1966); In re Donohue, 226 USPQ 619, 621 (Fed. Cir. 1985).

Looking to the Action's primary argument, whereas in para. 3 of the Action against the present application's independent claims 1 ("Apparatus for real estate escrow transactions, comprising. . ."), 11 ("Computerized method for real estate escrow transactions, . . ."), and 17 ("A computer memory having a program for real estate escrow transaction. . ."), the Action alleges

". . .Martin teaches apparatus *(fund allocation methodology)* for real state [sic] escrow transactions (*real estate transaction)*. . .,"

there is absolutely no such disclosure at all in Martin. Martin only discloses automating existing debt payment through programming ATMs accordingly.

Moreover, in that Martin is only for existing debt payment automation and not any escrow system at all. It is not an appropriate reference under Section 102. In applicant's opinion, it is even non-analogous art.

It is respectfully submitted that all the rejections be withdrawn.

2. RE PARA. 4 - 15 OF THE ACTION, INDIVIDUALLY RELIED UPON SECTIONS OF MARTIN DO NOT TEACH ANYTHING REGARDING REAL ESTATE ESCROW

The Action relies on specific segments of the reference for all further rejections of applicant's claims. The citations are chain cited at the end of each objection verbatim; there is no given connection between the citation and specific segments of the

immediately preceding argument, and thus applicant must respond in kind. The arguments are flawed and can not stand.

In each rejection, the Action relies upon the "abstract." In fact, there is no mention of real estate escrow in the Abstract.

In each rejection, the Action relies upon "fig 2, 3." Turning to Martin's own definitions, col. 8, Figure 2 "shows a block diagram of the present invention illustrating the transactions that occur during the *payment of a debt obligation*. . .," Figure 3 "is a flowchart illustrating the process of a *debt obligation payment*. . .." (emphases added.) These can not relate to a real estate escrow because it is not until after the successful close of the escrow when the buyer must start monthly payments on his new mortgage, if any.

In each rejection, the Action relies upon col. 4, lines 44-55, which begins, "It is also an object of the present invention to reduce payment processing costs for debt servicers, such as lone servicers (e.g., mortgage, auto and home equity loan servicers, other monthly consumer debt and bill payment processors (e.g., credit card companies, public utilities, and phone and cable companies), and time payment processors. . .." Because Martin mentions "mortgage" and "home equity" here, it may have been the cause of confusion in thinking that an "escrow company" is a "loan servicer," as the Action implies. This is not true. *Real estate escrow companies have no such banking or consumer financing services; it is merely a form of holding company for verifying the accuracy and completion of terms of a contract for a purchase-and-sale of a given property.* The transfer of funds therethrough is merely one aspect as clearly shown in applicant's drawings and described in the specification. In fact, this paragraph speaks to *applicant's* favor in that it is undeniable that the description here has to do with a single payment of many on a continuing, existing debt. This is contrary to an escrow transaction. Moreover, lines 54-59 clearly signify the use of the ATM for such a payment on a ". . .loan or debt payment is due or past due. . .." In fact, in a real estate escrow, it is not even possible to offer such methods because any loan debt obligation in a real estate escrow is not issued nor effective until the successful closing and the passing of clear title from Seller to Buyer.

In each rejection, the Action relies upon "col. 5 line 36-61." This section begins, "These and other objects are achieved by the present invention, which provides. . .." Here Martin begins his summaries of his invention. Nothing in this section speaks to a real estate escrow. Martin uses the terms "loan servicer(s)," line 39 for "non-bank loan payment processors" and "third party loan payment facilitator(s)" which is apparently a computer sevice company which ", . . .reformats the data as necessary, appends this information with any similar information received from other loan or debt servicers, and transmits the appended information to one or more ATM transaction processors." The gist of the latter is that it is a network provider which implements Martin's invention for existing debt payments. Neither of these have any function with real estate escrow transactions.

In each rejection, the Action relies upon col. "10 line 22-56." This section clearly has to do with loan servicing, the citation beginning, "As mentioned above, loan servicer 24. . .." Martin calls for ". . .the burden of the loan officer to segregate funds received from a consumer is eliminated, while segregation required by investors is maintained. . .." There is no loan servicer involved in performing the real estate escrow process; the conventional term of art would be "escrow agent." If the buyer has secured a mortgage, it does not become a legal debt and the buyer has no obligation to make payments until after the close of escrow when the buyer has gained legal title to the property.

In each rejection, the Action relies upon "table 1, column 13 and 14." The Examiner has apparently boxed col. 14, lines 8-13, which mention

"Current Escrow Tax Owed - Amount of payment that will be applied to local property taxes manage by servicer, if any"

and

"Current Escrow Insurance Owed – Amount of payment due that will be applied to pay premeium on home owners insureance managed by servicer, if any."

It is obvious why the Martin patent has confused the issues here. In fact, the author of the Martin patent has used a misnomer. It is well known to those skilled in the art, and even to anyone who has taken out a mortgage, so therefore it can be even called ubiquitous, that such are not "escrow" amounts but are *"impound"* amounts. Even so, impounds are not part of a real estate escrow transaction, but are merely terms and conditions of the mortgage contract agreement between the buyer and his mortgage

provider; the lender *impounds* monies paid beyond that needed to pay down the mortgage to pay taxes and insurance on the property because the lender does not trust the borrower to make such payments on the property which secures the loan. Again, if a loan is secured by a buyer and funded by such a lender, impound payments and segregation would not be needed until after the close of escrow, being part of the loan payments thereafter.

Martin does discuss mortgage payments specifically at col. 7, lines 6-14, and col. 8, lines 5-11. Such payments are made only after an escrow has closed. Again, it is overwhelmingly clear that Martin Jr. et al. provides not a shred of evidence to support anticipation of the present invention. The arguments by the USPTO are *non sequitor*; in real life, Martin's system and method can only apply to existing financial obligation payments; with respect to real estate escrows, such exist only after escrow has closed.

It is respectfully requested that all of the rejections be withdrawn.

SUMMARY AND CONCLUSION

The Actions against this application have focused on financial transactions. This is not a main focus of a real estate escrow although in some, but not all real estate escrows, mortgage providers might be involved merely as one party. Applicant's method and apparatus is for real estate escrow automation in its entirety.

Based upon the foregoing and the amendments, if any, it is submitted that the application now presents claims which are directed to novel, unobvious, and distinct features of the present invention which are an advance to the state of the art. No new matter has been added to the application. Reconsideration and early allowance of all claims is respectfully requested. The right is expressly reserved without prejudice to reassert any and all arguments, to raise new arguments, and to make further amendments should a Notice of Allowance not be forth coming.

(4) AMENDMENTS: VERSIONS WITH MARKINGS TO SHOW CHANGES MADE

Not applicable.

Questions or suggestions that will advance the case to allowance may be directed to the undersigned by teleconference at the Examiner's convenience.

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Respectfully submitted,

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[1] Do not change formal correspondence address; unless a PTO/SB/122 is filed herewith, formal correspondence should continue to be sent to Hewlett-Packard per the Declaration.